IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.80 OF 2004

Mr.N.L.Mehta & ors. Petitioners

Vs.

Ushaben A. Shah Respondent

WITH

CIVIL REVISION APPLICATION NO.81 OF 2004

Mr.N.L.Mehta & ors. Petitioners

Vs.

Nipa D. Shah Respondent

WITH

CIVIL REVISION APPLICATION NO.82 OF 2004

Mr.N.L.Mehta & ors. Petitioners

Vs.

Mrs.Hina S. Desai Respondent

WITH

CIVIL REVISION APPLICATION NO.88 OF 2004

Mr.N.L.Mehta & ors. Petitioners

Vs.

Sanjay A. Desai Respondent

WITH

CIVIL REVISION APPLICATION NO.89 OF 2004

Mr.N.L.Mehta & ors. Petitioners

Vs.

Mehul J. Shah Respondent

WITH

CIVIL REVISION APPLICATION NO.90 OF 2004

Mr.N.L.Mehta & ors. Petitioners

Vs.

Shantaben D. Shah Respondent

Mr.Vineet B.Naik i/b M/s.Pravin Mehta & Mithi & Co.
for petitioners in all the matters.

Mr. S. R. Subramaniam i/b Mrs.Nipa S. Gupte for
respondents in all the matters.

CORAM: B.H.MARLAPALLE,J.
August 11, 2005.

ORAL ORDER:

1. These six appeals arise from the similar order passed by the trial Court rejecting the Notices of Motion separately moved by the defendants in six different Suits viz. S.C. Suit Nos.5403 to 5408 of 1997 pending before the City Civil Court at Mumbai.

2. The defendants filed the Notices of Motion for disposal of the respective suits on the basis of the purported settlement between the parties and the Notice of Motion was opposed by each of the plaintiffs by filing reply. As per the case made out by the defendants it was agreed that each one of the plaintiffs would be paid an amount of Rs.4,75,000/- (four Demand Drafts)) and Rs.2,85,000/- as well as Rs.3,15,000/- thus making a total of Rs.25,00,000/-. The plaintiffs in their reply opposing the Notices of Motion stated that as per them the agreed terms of settlement were as under:

(a). The agreed aggregate amount of payment was Rs.2,25,00,000/- in respect of the six flats and not Rs.25,00,000/-.

(b). The settlement of both the suits was to be carried out simultaneously and was to take place if both the suits were settled in terms of the agreed terms which has reference is to High Court Suit No.3294 of 1992 filed by the defendants.

(c) Consent Terms were to be submitted before the

respective Courts simultaneously on receipt of Rs.2,25,00,000/- and the defendants would take steps to withdraw the High Court Suit No.3294 of 1992 prior to filing of the Consent Terms in the six suits pending before the City Civil Court.

. As per the plaintiffs these terms agreed between the parties were not acted upon and the settlement terms purported to have been agreed and placed before the City Civil Court were not the terms agreed between the parties. The Notices of Motion were, therefore, opposed by stating as under:

> "I submit that admittedly the Consent Terms are not signed by the parties. In fact these Consent Terms are not finalized and approved by the parties. Apart therefrom Consent Terms annexed to the Affidavit is not as per the without prejudice negotiations between the parties. As pointed out hereafter, the Demand Drafts of aggregate sum of Rs.25,00,000/- (Rupees Twenty Five Lacs only) stated to be taken out for payment to be is not the agreed amount. The aggregate agreed amount payable to myself and other five Flat Purchasers was Rs.2,25,00,000/- (Rupees Two Crores Twenty Five Lacs only) and I was to be paid proportionately. As against that the Defendants have wrongfully proceeded on the basis of aggregate sum of Rs.25,00,000/- (Rupees Twenty Five Lacs only) payable to all the six Flat Purchasers. The Defendants have not satisfied the Plaintiff in respect of the whole or any part of the subject matter of the suit. I say that as such the provisions of O.23 R.3 of the Code of Civil Procedure are

not complied with. I submit that on this ground alone the Notice of Motion is liable to be dismissed with cost."

3. The trial Court referred to the decision of the Apex Court in the case of Gurpreet Singh v. Chatur Bhuj Goel **[AIR 1988 SC 400]** for conditions precedent to dispose off the suit by allowing an application under Order XXIII Rule 3 of CPC and noted that in fact there was no agreement signed between the parties. The purshis taken out by the learned Advocates for the respective parties could not be accepted in the absence of parties having signed the consent terms and thereafter they having been placed on record.

4. The trial Court also proceeded to reject the prayer made by the defendants for leave to lead evidence. This was rightly objected to by the learned counsel for the plaintiffs as well. When the plaintiffs have clearly stated (a) that the negotiations had taken place and terms and conditions agreed upon were deviated by the defendants and (b) there were no signed consent terms placed on record, there was no case for granting relief to lead evidence. The reasoning given by the trial Court in

support of dismissal of the Notices of Motion cannot be faulted with and, therefore, these appeals fail at the threshold. The appeals are dismissed in limine.

(B.H.MARLAPALLE,J.)